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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.B. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. M.H. et al., Defendants and Appellants.	E062459 (Super.Ct.No. RIJ1201084) OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed in part; reversed in part with directions.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant M.H.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant E.F.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Anna M. Marchand, Deputy County Counsel, for Plaintiff and Respondent.

M.H., the mother of J., D. and E., and E.F., the father of E., appeal from an order terminating their parental rights to D. and E.[1] We reject their contentions concerning the denial of their petitions to modify the order terminating reunification services and the court's finding that neither the beneficial parental relationship exception to the statutory preference for adoption nor the sibling relationship exception applied. However, we agree that conditional reversal is required in order for the Riverside County Department of Public Social Services to comply with its obligations under the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.)

FACTUAL AND PROCEDURAL HISTORY

On October 22, 2012, the Riverside County Department of Public Social Services (DPSS) filed a petition pursuant to Welfare and Institutions Code section 300, alleging that M.H.'s (hereafter Mother) three daughters, J., D. and E. came within various provisions of section 300.[2] Each of the girls has a different father. E.F. (hereafter Father) is the father of E. E. is the youngest child and was born prematurely in June 2012. Mother and E. both tested positive for marijuana at the time of E.'s birth. The petition alleged that Mother abused controlled substances and had a criminal conviction

[1] Mother's oldest daughter, J., who was 16 at the time the petition was filed, turned 18 during the dependency, and the court declared her a nonminor dependent on June 18, 2014. Accordingly, only D. and E. are the subjects of this appeal.

[2] All statutory citations refer to the Welfare and Institutions Code.

for possession of cocaine base for sale; that she led a transient lifestyle and had limited provisions to care for a newborn; that she did not visit regularly while E. remained in the hospital and did not bond with E; and that she failed to participate in training to learn to care for E.'s complex medical conditions. It alleged that all three fathers had failed to provide support. It also alleged that Father had an extensive criminal history for acts of violence, including domestic violence, and that he was currently incarcerated for violating the terms of his probation. The whereabouts of J.'s and D.'s fathers were unknown. Finally, the petition alleged that because of the abuse or neglect of E., J. and D. were at risk of similar neglect.

The children were ordered detained on October 23, 2012, and Father, who was present at the hearing in custody, was declared E.'s presumed father. Father filed an ICWA-020 form reporting possible Cherokee heritage. Mother filed an ICWA-020 form reporting possible Choctaw heritage. The court found that ICWA might apply.

The jurisdiction/disposition report stated that E. was born at 24 weeks gestation and remained hospitalized for several months for treatment of serious medical conditions resulting from her prematurity. Hospital staff expressed concern that Mother failed to visit frequently and failed to participate in training to deal with E.'s medical conditions, and that she would be unable to take E. to the numerous medical appointments she would need because of lack of transportation. Upon her discharge from the hospital, E. was placed in a foster home equipped to deal with a medically fragile child. Mother was a transient and lacked suitable housing for J., then 16 years old, and D., then two years old,

who were placed together in a foster home. The girls were adjusting well to the foster home.

Mother had a history of using marijuana which interfered with her ability to care for her children, although she did not believe that her marijuana use was a problem. She was also unconcerned about the domestic violence in her past and current relationships. She denied any domestic violence in her relationship with Father. However, he was then incarcerated for inflicting injury on Mother in an altercation that took place in a grocery store. Mother did not appear concerned about her children's physical and emotional needs. As a result of Mother's failure to provide stable housing, J. had attended six different schools in the past few years and was far behind in school credits. Mother also had no stable source of income.

D.'s alleged father had seen D. only once. He was not sure she was his daughter. D. was raised by Mother and E.'s father, with whom Mother had been in a relationship with for the past three years. However, Father had seen E. only once. Mother was currently three months pregnant. She was not receiving prenatal care.[3] Another child had died at three weeks of age, and she had miscarried twins at five months gestation.

J.'s father could not be located by the time of the jurisdiction and disposition hearing, although Mother reported that he remained in contact with J. by telephone.

DPSS reported that the parents had been cooperative and had expressed a willingness to participate in any necessary services in order for the children to return

[3] We see no further reference to this child in the record.

home. J. wanted her mother to be stable and to "be a family once again." However, she did not want to move to a different school any more. J. was then in the 11th grade and wanted to explore programs that would allow her to make up credits. She was reportedly in good health and did not engage in any negative behaviors.

D., age two, was meeting her developmental milestones. E., despite numerous physical problems associated with prematurity, appeared to be meeting developmental milestones as well. She was receiving appropriate medical care.

Mother was regularly attending supervised visits. She visited E. one hour a week and visited with D. and J. one hour a week. She was bonding with E. and continued to bond with D., who was always happy to see her. J. was sometimes quiet during visits and once refused to participate. She told the social worker that she was upset with Mother because she had suggested that J. be moved to a relative placement.

At the jurisdiction and disposition hearing, Mother and Father waived their trial rights. The court found the allegations of the petition true, except for the "whereabouts unknown" allegation as to D.'s alleged father. The court made the appropriate findings supporting continued removal of the children from the custody of the parents. It ordered reunification services for Mother and Father, but advised them that because the children were a sibling group including children under the age of three, they were limited to six months of reunification services. The court set the six-month review hearing for June 6, 2013. The court found that notice had been given as required by ICWA and that ICWA does not apply.

For the six-month review hearing, DPSS reported that the children were having weekly sibling visits during their visits with Mother. D. had been moved to the home of a maternal aunt. Because she did not want to change schools again, J. chose to remain in the same foster home rather than moving to the aunt's home. E. remained in the medically fragile foster home. J. had spent a week at the maternal aunt's home with D., and D. appeared to be very attached to J.

Mother was visiting all three children consistently, and the visits were appropriate. D.'s caregiver said that D. benefitted from the visits with Mother and with her siblings. The social worker who supervised the visits reported that D. was excited to see Mother, and smiled and embraced Mother during the visits.

Mother was participating in her programs. She had completed a parenting program, a substance abuse program and medically fragile child training. She had recently begun attending individual counseling. However, she continued to test positive for marijuana. On July 8, 2013, a hair follicle test was positive for methamphetamine.

At the six-month review hearing, the court found that the parents had made minimal progress in their case plans and that there was no substantial probability of reunification if further services were offered. Father was still incarcerated and was able to participate in services only in a limited way, and mother had not benefitted from her services because she continued to test positive for marijuana and had once tested positive for methamphetamine. The court removed J. from the sibling group and gave Mother an additional six months of services for J. The court terminated services as to D. and E. and

set a permanency planning hearing for them.[4] Mother's visitation was reduced to two times a month for two hours per visit.

Prior to the permanency planning hearing scheduled for December 18, 2013, DPSS reported that the children were continuing to have sibling visits during their visitations with Mother. E. was "build[ing] a bond" with D. and J. E. had been downgraded from medically fragile and had been moved to a different foster home on October 2, 2013. She was still an Inland Regional Center client, but was showing great improvement developmentally. Because an adoptive home had not been found for D. and E., DPSS recommended continuing the hearing. The hearing was continued to April 17, 2014.

For the continued hearing, DPSS reported that D.'s caregiver, the maternal aunt, had decided to adopt D. No adoptive home had been found for E. DPSS recommended an additional continuance to allow for completion of an adoption assessment for D.'s caregiver and to locate an adoptive home for E. The hearing was continued to August 18, 2014.

E. was moved to a prospective adoptive home on July 7, 2014, after a transitional period of visits with the prospective adoptive parents. D.'s caregiver had decided not to adopt her, and E.'s prospective adoptive parents were considering adopting D. as well. In June 2014, Mother moved to Sacramento, where she had obtained a job, and had not been able to visit the children for several weeks.

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[4] The court advised the parents of their writ rights and obligations, but neither parent filed a writ petition challenging the termination of their services.

The court continued the permanency planning hearing to September 29, 2014. For that hearing, DPSS reported that Mother visited with D. and E. on August 22 and September 12, 2014. J. did not attend the visits because she had moved to Los Angeles County for college on August 21, 2014. D. was moved to the prospective adoptive home with E. on September 12, 2014, after transitional visits. The prospective adoptive home was approved. On October 29, 2014, DPSS reported that D. and E. were doing well in that home.

Prior to the permanency planning hearing, both parents filed petitions for modification of the order terminating services, pursuant to section 388. The court denied the petitions without a hearing. After a contested hearing, the court terminated parental rights as to D. and E. and ordered both children referred for adoption.[5]

Mother and Father each filed a timely notice of appeal.

LEGAL ANALYSIS

1.

THE DENIAL OF THE PARENTS' SECTION 388 PETITIONS WITHOUT AN EVIDENTIARY HEARING WAS NOT AN ABUSE OF DISCRETION

Under section 388, a parent may petition to change or set aside a prior order "upon grounds of change of circumstance or new evidence." (§ 388, subd. (a)(1); see also Cal.

[5] We discuss additional details concerning the section 388 petitions and the permanency planning hearing below, in connection with the parents' contentions on appeal.

Rules of Court, rule 5.570(a)).[6] The juvenile court shall order a hearing where "it appears that the best interests of the child . . . may be promoted" by the new order. (§ 388, subd. (d).) Thus, the parent must sufficiently allege both a change in circumstances or new evidence and the promotion of the child's best interests. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause, i.e., that the allegations would sustain a favorable decision if they were found to be true at a hearing. (*Ibid*.; rule 5.570(d)(1).)[7] While the petition must be liberally construed in favor of its sufficiency (rule 5.570(a)), the allegations must nonetheless describe specifically how the petition will advance the child's best interest. (*In re G.B.*, at p. 1157.)

Here, Mother filed two section 388 petitions seeking either the return of the children to her custody on family maintenance or reinstatement of reunification services. Her petitions alleged that she had completed drug treatment, was gainfully employed, and had a place to live for herself and her children. Mother stated that the modification was in the children's best interests because "Mother has maintained regular visits with the children" and "Mother and children have and maintain a strong bond" (petition No. 1),

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[6] All further citations to rules refer to the California Rules of Court.

[7] "The court may deny the petition ex parte if: [¶] (1) The petition filed under section 388(a) or section 778 fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction or fails to show that the requested modification would promote the best interest of the child, nonminor, or nonminor dependent." (Rule 5.570(d)(1).)

and the "children recognize Mother as their mother" and "Mother has maintained visits with the children even while residing over 400 miles away" (petition No. 2).

Father's petition, which sought further reunification services as to E. and a transition to his custody, alleged that he had been released from custody, that he had participated in services on his own initiative, had maintained contact with E., had complied with his parole terms, and had garnered family support in his goal to have E. returned to his care. The petition alleged that the modification was in E.'s best interest for the following reasons: "The minor has been placed in a prospective adoptive home for a short period of time. The father of [E.] also has a relationship to her sibling, [D.] as she did see him as a father figure and would have after-court visits with him when father was transported to court. Father having been out of custody for seven months now has demonstrated his commitment to his daughter and has the skills and family support to nurture and care for her."

The court found that neither parent's petition showed that the proposed change was in the children's best interests. We review this determination for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Father's petition clearly does not meet his burden of making a prima facie showing that resumption of reunification services might be in E.'s best interest because it does not state any facts or provide any evidence as to how E. would benefit if the petition were granted. "If a petitioner could get by with general, conclusory allegations, there would be no need for an initial determination by the juvenile court about whether an evidentiary hearing was warranted. In such circumstances, the decision to grant a hearing

on a section 388 petition would be nothing more than a pointless formality." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

Mother's petitions also do not state any facts that if proven would sustain a favorable decision with respect to the best interest prong. (*In re G.B., supra*, 227 Cal.App.4th at p. 1157.) It is not enough to show that she has maintained regular visits with the children or that they have a strong bond. After the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.) Rather, at this point, the focus shifts to the needs of the child for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. (*Id*. at p. 310.) This presumption applies with even greater strength when the permanent plan is adoption rather than foster care. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) To meet her initial burden of making a prima facie showing that she could rebut this presumption, Mother was required to state specific facts showing that the best interests of the children would be promoted by the modification she requested. (*In re G.B.*, at p. 1157.) Mother did not do so, and the court did not abuse its discretion by concluding that she did not meet her burden sufficiently to warrant a hearing.

Mother contends, correctly, that she needed only to show that the best interests of the children *might* be promoted by the modification of the prior order in order to compel the court to order a hearing. But the only facts she cites are that D. was always happy to see her and that she had a bond with both children. In the absence of sufficient facts to

allow the court to determine that this bond, if proven, was sufficient to outweigh the children's interests in stability, we cannot say that it was an abuse of discretion to deny the petition summarily.

Mother also implies that because, as of the dates the petitions were filed, D. and E. had only been in the prospective adoptive home for a short time, reinstating reunification services would not interfere with their interest in stability.[8] We disagree. It takes time to achieve a sense of stability and permanence, and it was not an abuse of discretion to determine that undermining that process for the purpose of giving Mother another chance to reunify was not in the children's best interests.

2.

NEITHER PARENT MET THE BURDEN OF PROOF WITH RESPECT TO THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION.

Both parents contend that the juvenile court should have found that the beneficial parental relationship exception to the statutory preference for adoption applied, and that the order terminating their parental rights must be reversed.

"Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds 'a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . .' (§ 366.26,

[8] Mother's caption refers to the children having been in the foster home only a short time. She does not, however, develop the argument on that point.

subd. (c)(1)(B)[(i)].)" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*).) Under these provisions, "the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a *compelling* reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances . . . 'must be considered in view of the legislative preference for adoption when reunification efforts have failed.'" (*In re Celine R.* (2003) 31 Cal.4th 45, 53, italics added (*Celine R.*).) "'Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.'" (*Ibid.*)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*Bailey J., supra,* 189 Cal.App.4th at p. 1314.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*Id.* at pp. 1314-1315.) A juvenile court's finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion: The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court's determination that the relationship does or does not constitute a "compelling reason" (*Celine R., supra,* 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*Bailey J.,* at pp. 1314-1315.)

Mother argues that substantial evidence supports the conclusion that a beneficial parental relationship existed. However, since it is the parent who bears the burden of

producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence *compels* such a finding as a matter of law. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) As the court in *In re I.W.* discussed, the substantial evidence rule is typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence. When, however, the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, "it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the [parent's] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding [in the parent's favor].' [Citation.]" (*In re I.W.*, at p. 1528.) Accordingly, unless the undisputed facts established the existence of a beneficial relationship as a matter of law, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed.

(*Bailey J.*, at p. 1314.) Here, neither parent demonstrates that the undisputed facts establish the existence of a beneficial relationship as a matter of law.[9]

In any event, even if we assume that the evidence showed that a parental relationship exists which is of some benefit to the children, the ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to either child as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound discretion of the juvenile court. (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) The court must "determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption." (*Id*. at p. 1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) """When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court."""" (*Id*. at p. 319.)

Here, the evidence the parents cite is simply that they had a bond with the children, the children were happy to visit with them, and D. had expressed her desire to

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[9] Father discusses various standards of review applied by different courts, but does not assert which one he relies on. Arguments are to be tailored according to the applicable standard of review, and failure to acknowledge the proper scope of review may be seen as a concession that the argument lacks merit. (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465.) However, just as Mother does, Father argues that the evidence supported a finding that the exception applied but does not demonstrate that the evidence compelled such a finding.

return home with Mother. A termination order is not subject to reversal merely because there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937; see also *In re C.F.* (2011) 193 Cal.App.4th 549, 557-559.) Rather, there must be evidence that the relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents" and that severance of the relationship "would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Here, there simply is no such evidence. E. was removed from her parents' custody at three months of age, and she never lived with either of them. She was about two and a half years old when parental rights were terminated, and she had never spent even a single night in either parent's home. Even though she had some bond with both parents, it is not clear that she actually understood that they were her parents or viewed them as parental figures. There was no evidence whatsoever that E. would suffer great detriment if parental rights were terminated. Consequently, we cannot say it was an abuse of discretion to fail to apply the exception to her.

D., who was almost three years old when she was removed from Mother's custody, clearly had a stronger bond with her mother, and she had expressed the desire to go home with her mother on many occasions. Nevertheless, she had been out of Mother's custody for over two years by the time parental rights were terminated, and there is simply no evidence that severing her relationship with Mother would cause her such detriment that it was an abuse of discretion to fail to apply the exception to her.

3.

NEITHER PARENT MET THE BURDEN OF PROOF WITH RESPECT TO THE SIBLING RELATIONSHIP EXCEPTION

A second exception to the legislative preference to adoption exists where the juvenile court "finds a compelling reason for determining that termination would be detrimental to the child" because there would be substantial interference with a child's sibling relationship. (§ 366.26, subd. (c)(1)(B)(v).) To determine whether the exception applies, the court must consider "nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (*Ibid.*) Mother asserts that the juvenile court erred in finding that the exception did not apply.[10]

Mother does not state the applicable standard of review. Rather, she merely argues that the evidence supported a finding that the exception applied and that the court should have ordered a guardianship in order to maintain the relationship D. and E. had developed with J. However, on appeal, the same analysis applies to all of the statutory exceptions. (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) Accordingly, as we discussed above in connection with the beneficial parental relationship exception, the parent must

[10] Father joins in this argument.

show that the evidence compelled a finding that a closely bonded sibling relationship exists which is beneficial to the child who is to be adopted and that interference with the relationship through adoption would cause so serious a detriment to the child as to outweigh the benefit the child would receive through adoption. (*Id.* at pp. 1317-1318.)

Here, since D. and E. were being placed together for adoption, the sole issue is whether interference with either child's relationship with J. would cause sufficient detriment to outweigh the benefit of adoption. We note, first, that there is no evidence that the adoption would have any effect on the children's relationship with J. DPSS represented to the court that the prospective adoptive parents were receptive to facilitating visits between J. and her sisters, and there was no evidence to the contrary. Accordingly, the parents did not meet their burden of proof that the adoption would interfere with the sibling relationship.[11] Second, there was no evidence whatsoever that either child would suffer significant detriment, sufficient to outweigh the benefit the child would receive from being adopted, if the adoption were to interfere with a relationship with J. The evidence mother points to, that both D. and E. loved J., talked about her constantly and enjoyed the telephone contact Mother provided for them, is simply not compelling evidence that either child would suffer a significant detriment by the loss of that contact. Certainly, it was not an abuse of discretion to conclude that any possible detriment they might suffer would not outweigh the benefits of adoption.

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[11] Mother contends that DPSS failed to prove that the adoptive parents would allow continued contact with J. However, it was her burden to prove that they would not do so, or that the adoption would otherwise interfere with the relationship between D. and E. and their sister.

4.

CONDITIONAL REVERSAL FOR ICWA COMPLIANCE IS REQUIRED.

As noted above, Father asserts that lack of compliance with ICWA inquiry and noticing requirements mandates reversal. He contends that the notices sent to the Indian tribes did not contain available pertinent information, and that the record fails to show that DPSS complied with its mandatory duty to investigate and to provide all available information concerning E.'s Indian ancestry.[12]

"ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. [Citations.] If there is reason to believe a child that is the subject of a dependency proceeding is an Indian child, ICWA requires that the child's Indian tribe be notified of the proceeding and its right to intervene. [Citations.]" (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1396.) The court and the social services agency have "reason to know" that a child may be an Indian child if anyone having an interest in the child provides information suggesting that the child is a member of a tribe or eligible for membership in a tribe. (§ 224.3, subd. (b)(1).)

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[12] Father seeks reversal only as to E. However, Mother joins in this argument, and because Father asserts deficiencies in the notice as to Mother's family history and her asserted Choctaw heritage, the notice issue pertains equally to D.

Neither parent challenged the sufficiency of the notice in the trial court. This does not, however, forfeit appellate review. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991.)

"'Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families. Notice ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian custodian or state agencies. Specifically, the tribe has the right to obtain jurisdiction over the proceedings by transfer to the tribal court or may intervene in the state court proceedings. Without notice, these important rights granted by [ICWA] would become meaningless.' [Citation.]" (*In re A.G.*, *supra*, 204 Cal.App.4th at p. 1396.) "Accordingly, federal and state law require that the notice sent to the potentially concerned tribes include 'available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.' [Citations.] To fulfill its responsibility, the Agency has an affirmative and continuing duty to inquire about, and if possible obtain, this information. [Citations.] Thus, a social worker who knows or has reason to know the child is Indian 'is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2 . . . .' (§ 224.3, subd. (c).) That information '*shall* include' '[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death,

tribal enrollment numbers, and any other identifying information, if known.' (§ 224.2, subd. (a)(5)(C).)" (*In re A.G.*, at pp. 1396-1397.)

Because of their critical importance, ICWA's notice requirements are strictly construed. (*In re A.G.*, *supra*, 204 Cal.App.4th at p. 1397.) If the record reflects that the social services agency failed to inquire of the parent or available relatives to obtain as much information as possible, a reviewing court may reverse the order terminating parental rights and direct the trial court to order the social services agency to comply with its duties of inquiry and notice under ICWA. (*Id*. at pp. 1393-1394, 1397.)

Here, both parents claimed Indian ancestry. Father's ICWA-020 form stated merely that he may have Cherokee ancestry. He provided no further information. Mother's form stated that she may have Choctaw ancestry though her mother, whose name and date of birth she wrote on the form. The ICWA-020 forms were filed on October 23, 2012, the day the detention hearing was originally calendared. Prior to October 22, 2012, DPSS had no information concerning the children's possible Indian ancestry. On November 6, 2012, DPSS mailed a "Notice of Child Custody Proceeding for Indian Child" to three Cherokee tribes, three Choctaw tribes, and the Blackfeet Nation, as well as the Bureau of Indian Affairs.

The notice contained Father's name, current and former addresses and date of birth, and indicated that he may have had ancestry in one of the three Cherokee tribes. The notice stated that Father's place of birth was unknown. The notice did not include any information concerning his parents or grandparents. Father contends that the absence of even the names of his parents indicates that DPSS failed to make any inquiry.

We agree that the record compels the conclusion that DPSS did not interview Father or other family members about their possible Indian ancestry. In the detention report, which was prepared before the parents filed their ICWA-020 forms, the social worker reported that she had not yet made any inquiry. In the jurisdiction/disposition report, the social worker stated that she had been unable to interview Father because he was then in solitary confinement and the detention center was unable to provide her access to him. By that time, notice had already been mailed to the Cherokee tribes, and a response had been received from only one tribe. Accordingly, DPSS stated that ICWA may apply. A later addendum report stated that the social worker interviewed father on November 27, 2012, after the notice had been sent to the tribes. The report does not reflect that the social worker asked Father any questions about his Indian ancestry. By the time of the jurisdiction/disposition hearing, responses had been received from the tribes and the Bureau of Indian Affairs. At the hearing, the court found that ICWA does not apply.

Based on this record, we conclude that DPSS failed in its duty to inquire into Father's Indian ancestry in order to provide all available information to the relevant Indian tribes. Although Father has not made any offer of proof as to what he would have told DPSS if it had inquired, we agree that it would be highly unusual if he knew that he had Cherokee ancestry but did not know the names of any of his Indian ancestors. Moreover, in his section 388 petition, Father reported that he had the support of family members. Those family members are an additional potential source of pertinent information, and DPSS had a duty to inquire of them. Inquiry error may be deemed

harmless where no such information exists, but where it does exist, the error requires reversal for a limited remand. (*In re H.B.* (2008) 161 Cal.App.4th 115, 121-122; *In re J.N.* (2006) 138 Cal.App.4th 450, 460-461.) Here, the information may or may not exist, but the record strongly suggests that inquiry would have been likely to produce some additional information which should be provided to the relevant tribes.

As to Mother, however, the notice indicates that further inquiry was made. Father points out that although the notice included the name and date of birth of Mother's mother, the person through whom Mother claimed Choctaw ancestry, it did not include a current or former address. The notice also stated the name of the maternal great-grandmother, also listed as a member of a Choctaw tribe, but contained no other information as to her. He contends that this shows that DPSS failed to ask Mother to provide those details, which would clearly be relevant to a tribe's review to determine whether the maternal grandmother or great-grandmother were members of the tribe. However, the notice also includes information Mother did not provide on her ICWA-020 form. On the ICWA-020 form, Mother stated that she had Choctaw ancestry through her mother. However, the notice mailed to the tribes also gives names and some information concerning Mother's paternal ancestors and states that they are or may be members of the Blackfeet Nation. This supports the conclusion that DPSS did ask Mother for additional information and that it reported all of the information she provided. On the other hand, the notice also gives Mother's father's address, but there is no indication in the record that DPSS contacted him for any additional information he could provide. Accordingly,

because we must conditionally reverse the judgment as to E. for further ICWA inquiry and notice, we will also conditionally reverse as to D. for the same purpose.

DISPOSITION

The judgment terminating parental rights as to E. and D. is reversed, and the case is remanded to the juvenile court with directions to order the Riverside County Department of Public Social Services to comply with the inquiry and notice requirements of ICWA. If, after proper notice, the juvenile court finds that either child is an Indian child as defined by ICWA, the court shall proceed in conformity with all provisions of ICWA. If, on the other hand, the court finds after proper notice that either E. or D. is not an Indian child, the judgment terminating parental rights shall be reinstated as to that child.

The judgment is otherwise affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.